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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,262	12/09/2005	Peter Zatloukal	120083-146181	3358
60/172	7590	10/13/2010		
SCHWABE, WILLIAMSON & WYATT, P.C. 1420 FIFTH, SUITE 3400 SEATTLE, WA 98101-4010			EXAMINER WALSH, DANIEL I	
			ART UNIT 2887	PAPER NUMBER
			MAIL DATE 10/13/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/560,262

Applicant(s)

ZATLOUKAL ET AL.

Examiner

DANIEL WALSH

Art Unit

2887

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-40.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: see NOTE below.

/DANIEL WALSH/
Primary Examiner, Art Unit 2887

NOTE: The Examiner maintains the rejections of claims 1-40 as per the final office action (mail date 6-22-10).

Regarding the Applicants' argument that the claims require a transceiver or a transmitter that is a component of the phone and not an entire phone, the Examiner notes that the circuitry of a phone is not the entire phone. Other elements such as housings, keypads, etc. also make up a phone, and therefore the transceiver as interpreted by the Examiner does not require it to be interpreted as the whole phone. Further, referring to the device as a two state switching transceiver does not require the transceiver/transmitter to include the whole phone/device.

While a phone can be referred to a transceiver/transmitter, it is clear to one of ordinary skill in the art that elements within the phone itself are responsible for such functionality, and therefore, other elements are not. Therefore, the functionality relied upon by the Examiner does not require "the whole phone" interpretation as argued by the Applicant. For example, a housing or keypad, is part of the phone, but is not actively involved in switching.

With respect to the applicants argument regarding Zalewski, the Examiner again notes that the signal two state switching transceiver can be interpreted as the elements within the phone itself, and does not need to include the whole phone (such as housings/keypads, etc.) for such functionality.

In response to the Applicants argument re Pertila, the Examiner notes that Pertila is not interpreted as teaching away, as Pertila teaches that sharing a transceiver is known/possible.

With respect to the "single component", the Examiner notes that the claims do not recite "single component" and as a result, the above interpretation of the prior art (elements of the whole that read upon the claimed limitations do not require that the element as a whole be interpreted as the transceiver/transmitter) is again noted.

While the prior art teaches a mobile element, the Examiner notes that the whole mobile element is not relied upon for the transceiver/transmitter teachings. While the whole device of the prior art can be referred to as a transmitter/transceiver, only certain elements/circuitry is responsible for such teachings, and therefore, it is not the whole device/apparatus of the prior art, but a component/part thereof that is relied upon.